

In the Court of Appeals of the State of Alaska

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APR 13 2021

APPELLATE COURTS
OF THE
STATE OF ALASKA

David Christopher Nordlund,
Appellant,

Court of Appeals No. A-13053

Request for Review
of Clerk's Intention
to Enter Judgment for Costs
Appointed Attorney

APR 16 2021

APPELLATE COURTS
OF THE
STATE OF ALASKA

v.

State of Alaska,

Appellee.

Trial Court Case No. 1KE-17-00335CI

I oppose the entry of the proposed judgment against me for the cost of appointed attorney for the following reason(s):

- ☐ My conviction was reversed on appeal.
- ☐ I filed the following type of action, but the clerk or court assessed the wrong amount for this action:

- ☐ Sentence Appeal
- ☐ Combined Merit Appeal and Petition for Sentence Review
- ☐ Petition for Sentence Review
- ☐ Petition for Hearing
- ☐ Merit Appeal
- ☐ Petition for Review
- ☐ Appeal from Post-Conviction Relief Proceeding
- ☐ Original Application

☐ The clerk or court is proposing to enter more than one judgment against me. This is not correct because all of my offenses were resolved in one court proceeding.

☐ I should be assessed less than the scheduled amount because my attorney spent only _____ hours on my case. (If you check this box, you must attach a statement from your attorney showing the hours spent on your case.)

☒ Other See attachment

Appellant's Phone

Appellant's Signature

Date

Appellant's Mailing Address

City

State

Zip

Mailed to State's Attorney on: _____

David C. Nordlund
ACOMS# 409464
Goose Creek Correctional Center
22301 W. Alsop Rd.
Wasilla, AK 99623

In the Court of Appeals of the State of Alaska

David Christopher Nordlund,
Appellant

Court of Appeals No. A-13053

v.

State of Alaska,
Appellee

Request for Review
of Clerks's Intention
to Enter Judgement for Costs
of Appointed Attorney
Attachment

Trial Court Case No. 1KE-17-00335CI

I, David C. Nordlund, appellant, oppose entry of the proposed judgement against me for the cost of appointed attorney. This opposition is based upon the failure of this Court to address violation of United States Constitution Article 1, Sec. 9, cl. 3; Sec. 10, cl. 1; and Amendment 5. A failure for which I should not be held liable. Article 1, Sec. 9, cl. 3: No Bill of Attainder or ex post facto Law shall be passed. Article 1, Sec. 10, cl. 1: No State shall pass any ex post facto Law. Amendment 5: Nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb.

Authorities:

AS 12.55.015(g)

AS 12.55.185(1)

AS 12.55.127(e)(1)

Benboe v. State, 738 P.2d 356, 360 [**10] (Alaska App. 1987)

Hill v. State, 22 P.2d 24, 29 [**16] (Alaska App. 2001)

Sonnier v. State, 483 P.2d 1003, 1005 [**9] (Alaska 1971)

Grant v. State, 379 P.3d 993, 994 HN1 (Alaska App. 2016)

Parker v. State, 667 P.2d 1272, 1274 [**9] (Alaska App. 1983)

Calder v. Bull, 3 U.S. 386, 390-91 (1798)

United States v. Paskow, 11 F.3d 873, 883 [**27-29] (9th Cir. App. 1993)

Facts and Proceedings:

On December 7, 2007, the Superior Court sentenced appellant to 20 years of imprisonment. "It is axiomatic that the trial courts' sentencing authority derives from the legislature." Benboe v. State, 738, P.2d 356, 360 [**10] (Alaska App. 1987).

Of those 20 years, only 10 years was an "active term of imprisonment." Active term of imprisonment has the meaning given in AS 12.55.127. AS 12.55.185.

"Active term of imprisonment" means the total term of imprisonment imposed for a crime, minus suspended imprisonment. AS 12.55.127.

Being that appellant was sentenced to an active term of imprisonment which exceeded 2 years, the sentence consisted of two parts: (1) a minimum term of imprisonment that is to not less than two-thirds of the total term of imprisonment; and (2) a maximum term of supervised release on mandatory parole that is equal to not more than one-third of the total term of imprisonment; the amount of time that appellant actually serves in imprisonment and on supervised release is subject to the provisions of AS 33.20.010 - 33.20.060. AS 12.55.015.

Therefore, imprisonment and supervised release are parts of the sentence as the active term of imprisonment.

On August 27, 2013, appellant was released to supervision on mandatory parole, which the Alaska Board of Parole revoked and reparaoled on separate occasions, which the State alleges results in a new release date in excess of that originally imposed.

However, "once a sentence has been meaningfully imposed, it may not, at a later time, be increased." Sonnier v. State, 483 P.2d 1003, 1005 [**9] (Alaska 1971), therefore, the action of the State was plainly violative of appellant's constitutional rights.

"Normally, once a criminal sentence is meaningfully imposed, any increase in that sentence will violate the double jeopardy clause." Grant v. State, 379 P.3d 993, 994 HN1 (Alaska App. 2016).

Appellant's sentence as originally imposed was to expire on December 7, 2016, however, the unlawful increase in sentence resulted in a new release date in excess of that ordered by the trial court at appellant's sentencing.

On January 1, 2017, an amended version of AS 33.16.220(i), the statute authorizing revocation of parole, went into effect more narrowly defining the law to expressly state "The board may not extend the period of parole beyond the maximum release date calculated by the department on the parolee's original sentence plus any time that has been tolled as described in this section."

Therefore, the State was on notice that it could not extend appellant's period of parole beyond December 7, 2016.

However, on May 17, 2017, the Alaska Board of Parole ordered the Department of Corrections to imprison appellant for 399 days.

Appellant then filed application for post-conviction relief in the matter of 1KE-17-00335CI, which was amended by court appointed counsel. Appellant insisted on the amendment to include a challenge to the modification of his sentence on double jeopardy grounds, however, court appointed counsel declined to amend the application to include

such a challenge even though "since the DiFrancesco decision, most courts have held (either explicitly or implicitly) that when a defendant challenges a modification of their sentence on double jeopardy grounds, the double jeopardy issue must be resolved by examining the applicable sentencing statutes and deciding whether, from the beginning, the court was authorized to modify the sentence in that way. Hill v. State, 22 P.2d 24, 29 [**16] (Alaska App. 2001).

One can clearly see that the sentencing statutes do not allow for any increase, or extension of the release date, as both parts, imprisonment and supervised release on mandatory parole, must expire within the maximum release originally imposed.

The State, incorrectly, relied on sec. 30(a) of ch. 13, SLA 2017, S.B. 55, to argue that the more narrowly defined AS 33.16.220(i) did not apply to appellant. This fails for three reasons.

1. The more narrowly defined version that went into effect on January 1, 2017, expressly states that it applied to parole granted, before, on, or after the effective date;
2. The State's interpretation of sec. 30(a) is incorrect, in that, it does not say that the more narrow definition does not apply retroactively.

Sec. 30(a) states: "Nothing in the provisions of AS 33.16.220(i) may be construed as invalidating a decision of the Board of Parole issued before January 1, 2017, that extended the period of supervision beyond the maximum release date on the original sentence."

This means that a decision of the board to revoke parole is not invalidated, i.e. to overturn a decision of revocation. This language does not validate any extension of a release date or increase in sentence, as the sentencing statutes do not authorize any such increase in punishment; and

3. Application of S.B. 55 would violate the prohibition of ex post facto laws.

"We agree with the Florida Supreme Court's observation in Greene v. State, 238 So. 2d 296 (Fla. 1970), that the significant event, for purposes of judging the ex post facto effect of a statute, is the date of the offense rather than the date of conviction." Parker v. State, 667 P.2d 1271, 1274 [**9] (Alaska App. 1983).

"It is beyond dispute that the ex post facto clause is violated when a parole violator is punished in a way that adversely affects his ultimate release date and the law that authorizes the punishment was adopted after the violator committed the underlying offense, but before he violated the terms of his parole. ... the ex post facto clause is violated when an amendment to the supervised release statute disadvantages a defendant who committed the underlying offense before the amendment became effective even if, United States v. Paskow, 11 F.3d 873, 883 [**27-29] (9th Cir. App. 1993).

This instant matter concerns an offense date of 2006, with both parts of the sentence calculated to expire on December 7, 2016. On January 1, 2017, the provisions of ch. 36 SLA 2016, S.B. 91 went into effect, which included, but not limited to AS 33.16.220(i), and AS 33.16.270, which became annexed to appellant's sentence. Calder v. Bull, 3 U.S. 386, 390-91 (1798).

Because of the unlawful extension of appellant's supervised release on mandatory parole, the State revoked said parole and incarcerated him, with a final adjudication date of May 17, 2017.


On June 20, 2017, sec. 30 of ch. 13 SLA 2017, S.B. 55 went into effect, which affected events antecedent to its enactment, thus, violated the prohibition against ex post facto laws, by being detrimental to appellant and affecting his ultimate release from prison.

The trial court erroneously agreed with the State's argument and affirmed appellant's parole revocation which lead to this appeal which this Court has declined to hear, however, this matter concerns: (1) disputed issues that are capable of repetition, (2) issues of which review may be repeatedly circumvented, and (3) issues that are so important to the public interest.

If this Court maintains its decision to not hear this case then the Court should not hold me liable for any costs incurred for appointed attorney.

I certify under penalty of perjury that the foregoing is true to the best of my belief.
No notary available, Wasilla, AK.
AS 09.63.020

Respectfully,

 4/10/21

David C. Nordlund